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OFFICE OF PETITIONS

In re Application of :
Zhong et al. : DECISION ON PETITION
Application No. 10/667,151 :
Filed: September 18, 2003 :
Attorney Docket No. 03-151US1 :

This is a decision on the "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181(a) AND STATEMENT ACCOMPANYING PETITION" filed June 12, 2006.

The above-identified application became abandoned for failure to file a timely and proper reply to the Notice to File Missing Parts of Application mailed December 12, 2003. The Notice set a two-month time limit for applicants to file an executed oath or declaration, and submit payment of the filing fee, additional claim fees and the late surcharge. Extensions of time were permitted under § 1.136(a).

On March 15, 2004, applicants filed a response, made timely by an accompanying petition for extension of time with the first month (and extension fee). However, on April 2, 2004, the Office mailed a Notice of Incomplete Reply, stating that applicants had not submitted sufficient fee payment. The Notice further stated that the period continued to run from that set in the Notice mailed December 12, 2003. No further reply received and no further extension obtained, the above-identified application became abandoned on March 13, 2004. A Notice of Abandonment was mailed on April 12, 2006.

In response, petitioner timely filed the instant petition. Petitioner states that the response filed March 15, 2004 was complete. Specifically, petitioner indicates that it included an authorization to charge any required fees to a Deposit Account and that during the relevant period the Deposit Account had more than sufficient funds to pay the fees. Further,

petitioner states that the Notice of Incomplete Application was never received.

Petitioner's arguments and evidence have been considered and found persuasive. A review of the response filed March 15, 2004, confirms that it included the authorization to charge any required fees to the Deposit Account. In fact, it appears that all fees were charged except the additional claim fees. There is no evidence in the record that at the time the Deposit Account was insufficient to cover payment of all of the fees. Thus, the evidence supports a conclusion that the response filed March 15, 2004 was complete.

Moreover, the petition includes a showing to the satisfaction of the Director that the Notice of Incomplete Reply was not received. The practitioner attests to not receiving the Office action. The petition includes a statement from patent paralegal Marjorie Scariati that a search of the file jacket and docket records indicates that the Notice was not received. In addition, a copy of the docket record where the non-received Notice would have been entered had it been received and docketed is enclosed.

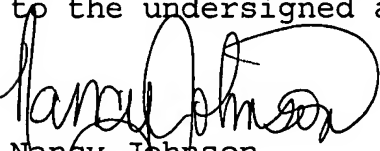
In view thereof, the Notice of Abandonment mailed April 12, 2006 is VACATED and the holding of abandonment is hereby WITHDRAWN.

The petition under § 1.181 is GRANTED.

No fee is required on petition under § 1.181.

The Office of Initial Patent Examination (OIPE) has been advised of this decision. The application file is, thereby, forwarded to OIPE to withdraw the holding of abandonment and to complete pre-examination processing including charging any outstanding claim fees pursuant to the authorization timely filed March 15, 2004.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.



Nancy Johnson
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